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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,630	09/30/2003	Daniel M. Brown	MEMS-0201-US	1132
40575	7590	09/28/2005	EXAMINER	
OLDS, MAIER & RICHARDSON, PLLC PO BOX 20245 ALEXANDRIA, VA 22320-1245			SPECTOR, DAVID N	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/673,630	Applicant(s) BROWN, DANIEL M.	
	Examiner David N. Spector	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003 and 27 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the use of the ambiguous phrase "transmitted as *[sic.]* Through *[sic.]* the second lens such that the fast and slow axes of both lenses interact [emphasis added] to create a desired beam profile" (Claim 2, Lines 7-8); inasmuch as an "interaction" among the axes of two lenses is meaningless. Claim 2 is further rejected under 35 U.S.C. 112, second paragraph, as being indefinite in the use of the ambiguous phrase "an initial profile of laser beams" (Claim 2, Lines 4, 5, 6 and 10).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

FOR EXAMINATION PURPOSES ONLY – IN THE REJECTION WHICH FOLLOWS, THE AMBIGUOUS PHRASE: "TRANSMITTED AS *[sic.]* THROUGH *[sic.]* THE SECOND LENS SUCH THAT THE FAST AND SLOW AXES OF BOTH LENSES INTERACT TO CREATE A DESIRED BEAM PROFILE" IS INTERPRETED AS: "THROUGH THE SECOND LENS SUCH THAT THE [LASER BEAM(S) INTERACT WITH] THE FAST AND SLOW AXES OF BOTH LENSES ~~INTERACT~~ TO CREATE A DESIRED BEAM PROFILE; SIMILARLY THE PHRASE "THE INITIAL PROFILE OF LASER BEAMS" IS TAKEN TO REFER TO THE ORIGINAL BEAM PROFILE OBTAINED FROM THE LASER SOURCE, IN THE ABSENCE OF THE INSTANT INVENTION.

Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Hopkins et al. (U.S. Patent No. 6,016,227). Hopkins et al. discloses an optical device (col. 4, ln. 31-51; **FIG. 3, FIG. 4**) comprising a first lens **34** having a fast axis different from a slow axis (col. 4, ln. 36-43) (*e.g.*

Hopkins et al. discloses lens **34** is a cylindrical lens, which by definition, has a fast axis different from its slow axis); and a second lens **36** having a fast axis different from its slow axis (col. 4, ln. 44-51) (e.g. similarly, *Hopkins et al.* discloses that lens **36** is also a cylindrical lens, and thus lens **36** also has a fast axis different from its slow axis), the second lens **36** is arranged between the first lens **34** and an initial profile (col. 1, ln. 45-46; **FIG. 1B**) of laser beams, the initial profile of laser beams being transmitted through the first lens **34** and incident on the second lens **36**, the portion of the initial profile of light beams incident on the second lens **36** being transmitted through second lens **36** such that the [laser beam(s) interact with] the fast and slow axes of both lenses **34** and **36** interact to create a desired beam profile (col. 4, ln. 8-27; **FIG. 2A-2C**) at a predetermined position **73** (col. 5, ln. 17-19; **FIG. 5**), where the predetermined position is such that the first **34** and second **36** lenses lie between the initial laser beam profile and the [predetermined] position **73** (col. 1, ln. 45-46; col. 5, ln. 1-19; **FIG. 1B**, **FIG. 5**). Claim 2 is therefore anticipated by Hopkins et al.

Claim Rejections - Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 2 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 10/860,124. Although the conflicting claims are not identical, they are not patentably distinct from each other because, minor semantic differences aside, all of the features/limitations presently recited in

Claim 2 of the instant application are also recited Claim 2 of the copending application. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Objections - Specification

35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The current specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the present specification repeatedly refers to "one-dimension" and "two-dimensional" (laser beam) profiles" (for example: Page 2, Lines 15-17). This is very ambiguous, inasmuch as only a point source could be considered to have a "one-dimensional" profile; in particular, the phrase "or various other one-dimensional profiles" (Page 2, Line 17) is meaningless.

Objections – Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the current drawings: i) figures 1-4 contain numerous features/reference numbers not discussed/identified in the specification; ii) figure 1 contain extraneous legends pointing to the "advantages" of the instant invention over the prior art; iii) figures 1-4 are replete with gradations in gray-shading which are not reproducible. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Other Remarks/Information

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Richardson et al. (U.S. Patent No. 6,612,719), Hashimoto (U.S. Patent No. 6,611,382), Wang et al. (U.S. Patent No. 6,556,352), Southwell (U.S. Patent No. 6,400,513), Huang et al. (U.S. Patent No. 6,301,059), Wolack et al. 6,044,096), Anthon (U.S. Patent No.6,125,222), En-

driz (U.S. Patent No. 5,802,092; U.S. Patent No. 5,793,783), and Fahlen (U.S. Patent No. 4,733,944) show additional optical devices that appear read on and anticipate applicant's independent claim 2. Numerous other references, including any prior art including two cylindrical lenses in series for shaping the irradiance distribution of a laser beam would also appear read on and anticipate independent claim 2.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any other inquiry concerning this communication or earlier communications from the examiner should be directed to David N. Spector whose telephone number is (571) 272-2338. The examiner can normally be reached at this number Monday through Friday between 6:00 AM and 2:30 PM. The Official FAX number for the United States Patent and Trademark Office is (571) 273-8300.

April 29, 2005

A handwritten signature in black ink, appearing to read 'D. N. Spector', with a long horizontal stroke extending to the right.

DAVID N. SPECTOR
PRIMARY EXAMINER